

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested. Claims 1, 9, 17, and 25 are canceled. Claims 2, 8, 10, 16, 18, 24, 26, and 32 are amended. Claims 2-8, 10-16, 18-24, and 26-32 are pending in the application.

Claims 2, 10, 18, and 26 are amended in independent form to include the limitations of the respective (canceled) independent claims 1, 9, 17, and 25.

Claims 1-32 stand rejected under 35 USC §102(e) in view of commonly-assigned U.S. Patent No. 7,277,954 to Stewart. The rejection of pending claims 2, 10, 18, and 26 in view of Stewart is respectfully traversed, as the rejection fails to demonstrate that Stewart discloses each and every element of the claim, as arranged in the claim. See MPEP 2131. "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). Hence, it is not sufficient that a single prior art reference discloses each element that is claimed, but the reference also must disclose that the elements are arranged as in the claims under review. *In re Bond*, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990) (citing *Lindemann Maschinenfabrik GmbH*).

Each of the independent claims 2, 10, 18, and 26 specify that the initiating includes, for each source-destination address pair: ***incrementing a corresponding assigned counter in response to a determined absence*** of an acknowledgement within a prescribed time interval of sending a data frame via the corresponding source-destination address pair; and ***decrementing the corresponding assigned counter, until reaching a zero value, for each acknowledgement detected within the corresponding prescribed time interval***.

As illustrated in Figure 3, a counter 68 assigned to a corresponding source-destination address pair is incremented if an acknowledgement is not received within the prescribed interval (e.g., step 108 of Fig. 4; 124 of Fig. 5), and decremented if the corresponding acknowledgement

is received within the prescribed interval (e.g., step 110 of Fig. 4, step 126 of Fig. 5). Hence, maintaining counters 68 of unsuccessful transmissions for each address pair enables the accumulation of real-time information about the availability of data flows through the network based on source-destination address pairs, enabling the endpoint to quantify the relative unreliability of source-destination pairs.

The rejection fails to demonstrate that Stewart discloses, for each source-destination address pair, the claimed *incrementing* the counter in response to a determined absence of an acknowledgement within a prescribed time interval, *and decrementing* the counter, until reaching a zero value, in response to each acknowledgement detected within the corresponding prescribed time interval. To the contrary, Stewart discloses at col. 8, lines 26-52 simply that “information *relating to* unanswered or non-responsive heartbeat messages” are recorded into the appropriate table (see col. 8, lines 41-44). In fact, Stewart illustrates “such information” as various parameters, but does not disclose incrementing or decrementing a counter, as claimed:

If Host A has only received one HB-ACK message from Host Z, and now determines that it is time to send a new heartbeat message to Host Z, Host A may update or insert any missing information relating to the non-received heartbeat-ACK message into an appropriate table(s).

According to a specific implementation, such information may include *predetermined minimum or maximum default values* such as, for example, a maximum timestamp value, a maximum one-way travel time value, a maximum delta value, a maximum roundtrip travel time value, etc. In a specific implementation, the missing heartbeat-ACK information which is inserted into the table(s) may correspond to *a most recently transmitted heartbeat message*, which may be identified by a current sequence number parameter.

(Col. 8, lines 47-61).

Hence, Stewart illustrates the “information relating to unanswered or non-responsive heartbeat messages” as predetermined minimum or maximum default values or the most recently transmitted heartbeat message. Stewart does not disclose the claimed incrementing or decrementing of counters, as claimed.

Hence, the §102 rejection should be withdrawn because it fails to demonstrate that the applied reference discloses each and every element of the claim. As specified in MPEP §2131: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference’ *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... ‘The identical invention must be shown in as complete detail as is contained in the ... claim.’ *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).” MPEP 2131 (Rev. 3, Aug. 2005, at p. 2100-76).

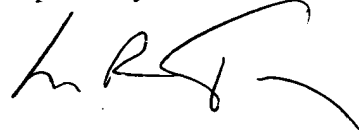
As noted in the Office Action, Stewart is commonly-assigned with the subject application, and therefore is not available as prior art under 35 USC §103(c).

It is believed the dependent claims are allowable in view of the foregoing.

In view of the above, it is believed this application is in condition for allowance, and such a Notice is respectfully solicited.

To the extent necessary, Applicant petitions for an extension of time under 37 C.F.R. 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including any missing or insufficient fees under 37 C.F.R. 1.17(a), to Deposit Account No. 50-1130, under Order No. 10-006, and please credit any excess fees to such deposit account.

Respectfully submitted,



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